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Attorneys for Defendant
MSC MEDITERRANEAN SHIPPING COMPANY, S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALLE PROCESSING CORP.,

Plaintiff,

- against -

MSC MEDITERRANEAN SHIPPING
COMPANY S.A.,

Defendant.

Civil Action No. 24-cv-05604

**ANSWER TO FIRST AMENDED
COMPLAINT**

Defendant MSC Mediterranean Shipping Company S.A. (“MSC”), by its attorneys, Lyons & Flood, PLLC, answers Plaintiff’s First Amended Complaint (ECF 6), upon information and belief as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2.
3. Admits the allegations of paragraph 3.
4. Admits the allegations of paragraph 4.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.

6. Admits that MSC issued bill of lading MEDUM04171169 for the carriage of sealed container MEDU9013758 and bill of lading MEDUM0417177 for the carriage of sealed container TRIU8671287 both from the port of Montevideo to the port of New York on a port-to-port basis on the M/V DARDANELLES, voyage 325R, but except as so specifically admitted, denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

7. The description of the alleged contents of the containers were provided by the shippers, and MSC received the containers only after they were stuffed and sealed. Accordingly, MSC has no knowledge of the contents of the containers apart from what the shippers declared. Documents of the shipper outside of the bills of lading show that the cargo in container MEDU9013758 was on 34 pallets and the cargo in container TRIU8671287 was on 29 pallets.

8. Admits only that the sealed containers arrived at the port of New York on or about August 8, 2023, but except as so specifically admitted, denies knowledge or information sufficient to form a belief as to the truth of the allegation of paragraph 8.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9.

10. Denies the allegations of paragraph 10.

11. MSC repeats and re-alleges paragraphs 1-10 above.

12. Denies the allegations of paragraph 12.

13. Denies the allegations of paragraph 13.

14. Denies the allegations of paragraph 14.

FIRST AFFIRMATIVE DEFENSE

15. The cargoes which are the subject of this suit were carried pursuant to the terms and conditions of certain charter parties, bills of lading, sea waybills, service contracts, tariffs and/or other contracts of carriage by which the shippers, owners, consignees, and holders of said bills of lading (and/or sea waybills) agreed to be bound, and MSC claims the benefits of all rights, immunities, defenses, exonerations, and limitations contained therein, including but not limited to, any covenant not to sue provisions and any clauses pertaining to forum, venue, and/or choice of law.

SECOND AFFIRMATIVE DEFENSE

16. The cargoes which are the subject of this suit were carried subject to (1) the United States Carriage of Goods by Sea Act (“COGSA”), Historical Note to 46 U.S.C. § 30701; (2) the Harter Act, 46 U.S.C. § 30701, *et seq.*; and/or (3) the Limitation of Vessel Owner’s Liability Act, 46 U.S.C. § 30505 *et seq.*, and MSC claims the benefits of all rights, immunities, defenses, exonerations, and limitations contained therein.

THIRD AFFIRMATIVE DEFENSE

17. If there was any loss or damage to the cargoes as alleged in the Complaint, which is denied, such loss or damage arose without the actual fault and privity of MSC and/or its agents or servants.

FOURTH AFFIRMATIVE DEFENSE

18. If there was any loss or damage to the cargoes as alleged in the Complaint, which is denied, such loss or damage was caused in whole or in part by: (1) the Plaintiff's and/or the underlying shipper's breach of their obligations and duties under law and any applicable contract, including but not limited to, breach of implied warranties, negligent misrepresentations concerning their cargoes, and/or failure to properly warn others concerning the dangerous propensities of its cargoes; (2) improper storage and/or transportation of the cargoes prior to delivery to MSC and/or its agents; (3) the pre-shipment condition of the cargoes; (4) the inherent defect, quality, or vice of the cargoes; (5) the insufficiency of packaging or marks; (6) the improper stuffing of the cargoes in the container(s); and/or (7) any other act or omission of the shipper, and/or owner of the goods, their agents or representatives, and/or other third-parties.

FIFTH AFFIRMATIVE DEFENSE

19. The nature and valuation of the goods were not declared by the shippers before the shipment and inserted in the bills of lading and/or sea waybills. If Plaintiff is entitled to any recovery, which is denied, such recovery should be limited to \$500 per "package" in accordance with COGSA and MSC's bill of lading terms, which provide that the pallets are the packages for purposes of the \$500 limitation.

SIXTH AFFIRMATIVE DEFENSE

20. The First Amended Complaint is time-barred.

WHEREFORE, Defendant MSC prays:

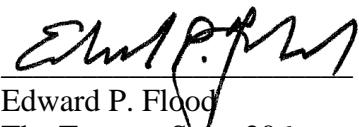
a. that judgment be entered in favor of Defendant MSC and against Plaintiff, dismissing Plaintiff's Amended Complaint herein together with costs and disbursements of this action; and

b. that judgment be entered in favor of Defendant MSC for such other and further relief as the Court deems just and proper.

Dated: November 6, 2024

LYONS & FLOOD, PLLC
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MSC Mediterranean Shipping Company, S.A.

By:


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